

March 22, 2017

Duc H. Nguyen  
EPA Suspension and Debarment Official  
Office Of Administration and Resources Management  
United States Environmental Protection Agency  
Washington, Dc 20460

RE: Notice of Suspension  
Nancy Peeler, EPA Case No. 16-0841-03A

Dear Mr. Nguyen:

I write to you as counsel for Nancy Peeler to contest your Notice of Suspension dated January 17, 2017. Ms. Peeler received it on January 22, 2017. You have agreed to an extension of time until March 22, 2017 to provide supplemental information. This letter is intended to support our prior submission. It is also intended to supplement information provided in my prior letter of February 19, 2017. See, Paragraphs 11, 14-18 below.

According to your Notice, you have suspended Ms. Peeler "from participation in federal contracts and assistance activities" based on information in the Action Referral Memorandum (ARM) to which you refer in your letter. The ARM includes a criminal complaint that has been filed in 67<sup>th</sup> Judicial District Court in Michigan on July 29, 2016 by Special Michigan Attorney General Todd Flood.

Your Notice also states that suspension is warranted under 2 C.F.R. § 180.700(a) "because the criminal information constitutes adequate evidence to suspect offenses under 2 C.F.R. §180.800(a)(4);" and, because the alleged "misconduct" described in the ARM "indicates a lack of business integrity or business honesty that seriously and directly affects Respondent's present responsibility." Finally, you conclude that there is "adequate evidence to support the suspension action under 2 C.F.R. §§ 180.700(a), (b) and (c).

Ms. Peeler contests your Action because there is not adequate evidence on which to conclude that Ms. Peeler was a "public official," principal or participant within the meaning of statutes and regulations involved, that she violated any duty established for the positions she held, or that she "committed irregularities which seriously reflect on the propriety of further Federal Government dealings with [her]." 2 C.F.R. § 180.715 (b)(3). More particularly, her reasons are as follows:



1. The state court criminal charges to which your Notice refers are only that – charges. Although the Complaint was filed on July 29, 2016, the date for a Preliminary Examination has been adjourned at the request of the prosecutor. The current date for the Examination is November 13, 2017. (Attachment A)
2. Michigan law requires a Preliminary Examination for the felony offenses charged in Counts 1 and 2 of the Complaint. The prosecution is required to present evidence at a Preliminary Examination to prove there is probable cause to believe the felonies have been committed. MCL 766.1, *et seq.* The Preliminary Examination “helps to satisfy the constitutional requirement that the defendant ‘be informed of the nature of the accusation’ against him.” *People v. Hunt*, 442 Mich 359, 362 (1993).
3. The Complaint is not the same as an indictment. It is not the result of a grand jury process or a determination of probable cause to support the allegations made by an independent deliberative body as referred to in 2 C.F.R. §180.700. (“...the suspending official may impose suspension only when that official determines that – (a) There exists **an indictment** for, or other adequate evidence to suspect, an offense listed under § 180.800(b) through (d);”) (emphasis added). The Complaint is based only on the untested allegations of the prosecutor.
4. There is no conviction or civil judgment of any kind finding that Ms. Peeler has committed any act that warrants suspension.
5. The evidence referred to in the ARM does not show that Ms. Peeler is or was a “public official” within the meaning of the Michigan statutes cited in the Complaint, or within the meaning of 2 C.F.R § 1532.995(h)(“Individuals that serve in positions of public trust”); or that she was a “participant” or “principal” in a covered transaction within the meaning of the CFR as stated at Paragraph 7 of the Request for Immediate Suspension (RIS) dated January 3, 2017.
6. Michigan courts require five indispensable elements to be proved by competent evidence to establish that an individual is a “public official” within the meaning of the statutes cited in the Complaint. The five factors are referred to as the *Coutu* factors. *People v. Coutu*, 459 Mich 348, 357-358 (1999). They are:
  1. The position” must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature.”
  2. The position “must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public.”
  3. “[T]he powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority.”



4. “[T]he duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body.”

5. The position “must have some permanency and continuity, and not be only temporary or occasional.”

459 Mich at 354; *see also*, *People v. Sledge*, 2016 Mich App LEXIS 1296 (unpublished) (holding that an Assistant Wayne County Corporation Counsel was not a public officer, as a matter of law)(Attachment B). It is our position that the evidence referred to in the the ARM and RIS, as discussed below, does not establish that Nancy Peeler was a public official within the meaning of those factors.

7. Nancy Peeler’s job title is not the “Director of the Michigan Department of Health and Human Services (“MDHHS”) Program for Maternal, Infant, and Early Childhood Home Visiting as alleged in the RIS at Page 1. She is a Section Manager, not a Director. The RIS cites a Michigan Attorney General Press Release, July 29, 2016, at 3 for support. (The July 29, 2016 Press Release misrepresents Ms. Peeler’s job title as “Director of the MDHHS Program for Maternal, Infant, and Early Childhood Home Visiting.”) The Attorney General’s Press Release is simply and unequivocally wrong. Her position title (since October 2015) is Section Manager, Early Childhood Health Section. (Attachment C, Organizational Chart). Ms. Peeler did serve as a grant manager or project director for an HHS grant called Maternal, Infant and Early Childhood Home Visiting, but that was not her job position. She does not serve as a grant manager for any EPA grant.
8. Nancy Peeler is the Section Manager for the Early Childhood Health Section. (Attachment C, Organizational Chart). She has held that position since October 26, 2015. Prior to that time her position was Childhood Health Unit Manager. She held that position since July 27, 2008. Both positions are state civil service classifications (Attachment D, Position Description).
9. The Early Childhood Health Section is a subdivision of the Michigan Department of Health and Human Services (MDHHS) Division of Family and Community Health which, in turn, is a subpart of the MDHHS Population Health & Community Services Administration. (Attachment C, Organizational Chart).
10. Contrary to the requirements of *Coutu*, Ms. Peeler’s position is not one created by the Constitution or legislature. *Coutu*, 459 Mich at 355. Neither does the position “possess a delegation of sovereign power.” Her duties are not defined directly or impliedly by the legislature. She does not perform her duties independently and without control of supervision. Nor is her position permanent. In sum, her position does not meet any of the elements of the *Coutu* test.



It is not suggested that you need to make an independent determination that she could not have violated the statutes with which she is charged because she is not a public figure. It is, however, our position that you should take these matters into account and that they support our position that there is neither a substantial legal or factual basis for the pending criminal charges.

11. The Attorney General's Warrant Request, at Paragraph 4, describes Ms. Peeler's position as a Section Manager, not a Director. ("On or about April 2014 through November 2015, defendant PEELER served as Early Childhood Health Section Manager at MDHHS.") (Attachment E).
12. Ms. Peeler is a state Civil Service employee. (Attachment D, Position Description)
13. The evidence also does not provide a substantial basis on which to conclude that Ms. Peeler violated any duty concerning the matters to which reference has been made that are charged in the Criminal complaint. Ms. Peeler's section has no responsibility for EPA funds of which she is aware. It is believed that the Grants listed on the Advanced Data Search included with the ARM, do not pertain to her section.
14. The charges against Ms. Peeler are not based on allegations or duties arising from statutes and regulations. The Warrant Request describes duties alleged violated by Ms. Peeler at Paragraph 4 (- "promot[ing] and protect[ing] the health of the population . . . ). The source cited in Paragraph 4 for that description of duties is a generalized description in the MDHHS "Mission Statement" that appears on the Department's website. (Attachment F, Warrant Request, Exhibit 1, page 5).
15. The duties alleged violated in the Complaint are not based on either Ms. Peeler's Civil Service job description . The functions of her department are referred to in a Michigan statute and regulations describing the Childhood Lead Protection Program. (Attachment G, MCL § 333. 5474, Lead poisoning prevention program; establishment, components, report; R 325.9082, et seq., Administrative Rules for Blood Testing, reporting responsibilities).
16. The Complaint allegation is that Ms. Peeler willfully and knowingly misled employees of the MDHHS "regarding reports of the increase in blood lead levels of children in Genessee County." Complaint, Count One. It is believed the charge is substantially based on an internal department email dated July 28, 2015 at 2:57 p.m. from Ms. Peeler to others within the MDHHS responding to a request for an asap update on Flint water. (Attachment H, Warrant Request, Exhibit 6). The Peeler July 28, 2015 email provides a narrative describing data on attached charts showing an increase in blood levels for the period from July to September, 2014. The email notes that "we are working with an Epidemiologist to statistically verify any significant difference." The charts referred to were transmitted along with the email and provided the underlying data to the recipients for their independent review. The charts are not included along with the email as part of the Warrant Request. They are included, however, in the Warrant Request exhibits, without explanation, at Exhibit 5. (Attachment I). They provide data which show an



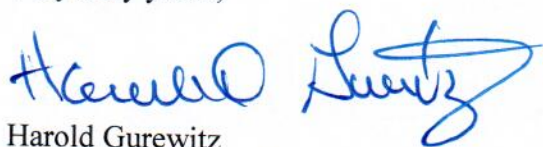
increase in childhood lead blood levels during the months of July through August 2014, but declined in following months. The information was disclosed, not withheld.

17. The initiating cause for Ms. Peeler's email is that it responded to a July 22, 2015 email by Nancy Grijalva, assistant to Director Nick Lyons, asking for an update on the Flint water situation. (Attachment J, July 22, 2015 email). While Ms. Grijalva's email provides information necessary to explain why Ms. Peeler wrote her email on July 28, 2015, simply to provide an update on the Flint water situation, it is not attached or referred to anywhere in the warrant request.
18. It is firmly believed that the information outlined above provides substantial reasons why the Complaint allegations of any criminal law violations are both legally and factually insufficient and will be dismissed after a preliminary examination. Ms. Peeler is not a public official within the meaning of Michigan controlling legal authority, and the evidence does not support any claim that she violated any known duty relating to her Civil Service position.

We will attempt to provide any additional information that may be required.

It is requested that the decision to suspend Ms. Peeler be reversed and withdrawn.

Very truly yours,



Harold Gurewitz  
Attorney for Nancy Peeler

HG/kad

Attachments



## **INDEX OF ATTACHMENTS**

- A Notice to Appear - Preliminary Examination set for 11/13/17
- B Opinion in *People v. Carla Sledge*, 2016 WL 3633124
- C Public Health & Community Services Administration Organizational Chart
- D Michigan Civil Service Commission Job Specification - State Administrative Manager
- E Request for Warrant - Paragraph 4
- F Warrant Request Exhibit 1
- G MCL 333.5474 - Lead Poisoning prevention program; establishment; components, report & Department of Community Health Division of Family & Community Health Blood Lead Analysis Reporting
- H Warrant Request Exhibit 6
- I Warrant Request Exhibit 5
- J July 22, 2015 email



Approved, SCAO

STATE OF MICHIGAN

JUDICIAL DISTRICT

JUDICIAL CIRCUIT

NOTICE TO APPEAR

CASE NO.

16TD1685

FY

OFFENSE:

1) COM LAW OFF

Court telephone no.

(810) 257-3170

Court address

630 S. SAGINAW STREET, STE 124  
FLINT CENTRAL, MI 48502

STATE OF MICHIGAN

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Defendant's attorney

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ATTORNEY GENERAL

Officer

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Date issued: MARCH 13, 2017

Clerk of the Court

IMPORTANT: READ THIS CAREFULLY

1. Bring this notice with you.
2. No case may be adjourned except by authority of the judge for good cause shown.
3. FAILURE OF THE DEFENDANT TO APPEAR in a civil case may cause a default judgment to be entered. FAILURE OF THE PLAINTIFF TO APPEAR may result in a dismissal of the case.

MC 06 (3/15) NOTICE TO APPEAR

YOU ARE DIRECTED TO APPEAR AT:

- ☒ The court address above, courtroom \_\_\_\_\_

Judge: JENNIFER J. MANLEY

P-59603

FOR THE FOLLOWING PURPOSE:

	DAY COURT ROOM or PLACE	DATE	TIME
<input type="checkbox"/> Probable Cause Conf.			
<input checked="" type="checkbox"/> Preliminary Exam	MONDAY	11/13/17	10:00 AM
<input type="checkbox"/> Pre-trial Conf.			
<input type="checkbox"/> Jury Selection			
<input type="checkbox"/> Jury Trial			
<input type="checkbox"/> Nonjury Trial			
<input type="checkbox"/> Sentencing			
<input type="checkbox"/> Motion			
<input type="checkbox"/> Arraignment			
<input type="checkbox"/> Informal Hearing			
<input type="checkbox"/> Formal Hearing			
<input type="checkbox"/>			

**EXHIBIT**

☐ The above matter is adjourned from

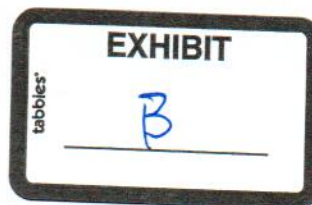
## EXHIBIT

A

Subject



WESTLAW



2016 WL 3633124

Only the Westlaw citation is currently available.

**People v. Sledge**

Court of Appeals of Michigan.

July 5, 2016

Not Reported in N.W.2d.

2016 WL 3633124

(Approx. 6 pages)

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

~~UNPUBLISHED~~

Court of Appeals of Michigan.

PEOPLE of the State of Michigan, Plaintiff–Appellee,

v.

Carla **SLEDGE**, Defendant–Appellant.

People of the State of Michigan, Plaintiff–Appellee,

v.

Steven Collins, Defendant–Appellant.

Docket Nos. 329626, 329686.

July 5, 2016.

Wayne Circuit Court; LC No. 14–008080–FH.

Before: METER, P.J., and SHAPIRO and O'BRIEN, JJ.

**Opinion**

PER CURIAM.

\*1 In these consolidated appeals, defendants were each charged by grand jury indictment with crimes arising out of alleged misconduct in the management of the Wayne County Jail Project. During the pendency of the project, from October 2010 until June 2013, defendant Carla **Sledge** was the Chief Financial Officer (CFO) for Wayne County and defendant Steven Collins served as an Assistant Wayne County Corporation Counsel. Counts 1 and 2 of the indictment charged defendants with the common law felony offense of misconduct in office, MCL 750.505, and Counts 3 and 4 charged defendants with willful neglect of duty, MCL 750.478. Defendants moved to dismiss their respective indictments. The trial court ruled that the indictment as to **Sledge** lacked the necessary specificity and directed the prosecution to file a bill of particulars. As to Collins, the trial court concluded that he was not

a public officer, and so dismissed the charges against him. In Docket No. 329626, **Sledge** appeals by leave granted<sup>1</sup> the trial court's decision in her case, and in Docket No. 329686, the prosecution appeals by right the trial court's decision in Collins' case. For the reasons stated in this opinion, we affirm in Docket No. 329626, and we affirm in part and reverse in part in Docket No. 329686.

#### I. MISCONDUCT IN OFFICE

Both **Sledge** and Collins were charged with the common law felony of misconduct in office. As to each, the indictment reads:

##### Count 1 ...: Common Law Offenses

on or between October, 2010 up to and including June, 2013, did commit an indictable offense at common law, to wit: Misconduct In Office by having a duty to fully and honestly inform a legislative body, to wit: the **Wayne County Commission**, and did intentionally testify, make statements, advise, communicate, create, and/or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the cost(s) and/or financial status of the Wayne County Consolidated Jail Project; contrary to MCL 750.505....

##### Count 2 ...: Common Law Offenses

on or between October, 2010 up to and including June, 2013, did commit an indictable offense at common law, to wit: Misconduct In Office by having a duty to fully and honestly inform a legislative body, to wit: the **Wayne County Building Authority**, and did intentionally testify, make statements, advise, communicate, create, and/or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the cost(s) and/or financial status of the Wayne County Consolidated Jail Project; contrary to MCL 750.505.... [Emphasis in original.]

MCL 750.505 provides that "[a]ny person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony [.]" "The offense of misconduct in office was an indictable offense at common law." *People v. Coutu (On Remand)*, 235 Mich.App 695, 705; 599 NW2d 556 (1999). The elements of the common-law offense of misconduct in office are:

\*2 (1) the person must be a public officer, (2) the conduct must be in the exercise of the duties of the office or done under the color of the office, (3) the acts were malfeasance or misfeasance, and (4) the acts must be corrupt behavior. [*People v. Carlin (On Remand)*, 239 Mich.App 49, 64; 607 NW2d 733 (1999) (citing Perkins & Boyce, Criminal Law (3d ed.), pp. 540–545).]



At common law, a public officer could be convicted of misconduct in office “(1) for committing any act which is itself wrongful, malfeasance, (2) for committing a lawful act in a wrongful manner, misfeasance, or (3) for failing to perform any act that the duties of the office require of the officer, nonfeasance.” *People v. Perkins*, 468 Mich. 448, 456; 662 NW2d 727 (2003). Further, as explained in *People v. Milton*, 257 Mich.App 467, 471; 668 NW2d 387 (2003):

[C]orruption, as an element of misconduct in office, is used in the sense of depravity, perversion or taint. Pursuant to the definitions [of depravity, perversion, and taint], a corrupt intent can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer. If the acts alleged against defendants demonstrate a tainted or perverse use of the powers and privileges granted them, or a perversion of the trust placed in them by the people of this state, ... they are sufficient to sustain a charge of misconduct in office. [Citations and quotation marks omitted; alterations in original.]

#### A. SLEDGE

The trial court found that with regard to **Sledge**, Counts 1 and 2 of the indictment:

fail to identify the breach of duty by the defendant **Sledge** in providing financial information to the Wayne County Commission and/or [the Wayne County Building Authority] WCBA and to show that it was done with a corrupt intent and constitute misfeasance or malfeasance within the common law Misconduct of Office charge. The Indictment [fails] to document the omissions, conduct, and actions by the defendant **Sledge** that would support the Misconduct in Office.

On appeal, **Sledge** asserts that the indictment should have been dismissed because she has no specific duty to “fully and honestly inform” the Wayne County Commission or the WCBA. In response, the prosecution argues that a specific duty is not required because misconduct in office can be committed if a defendant was acting under the color of his or her office. We agree that the second element of misconduct in office does not require the prosecution to prove that defendant was exercising a duty specifically enjoined by law. Instead, it is sufficient if the defendant was exercising a duty of his or her office or was acting “under the color of the office.” *Carlin (On Remand)*, 239 Mich.App at 64. Thus, we reject **Sledge's** argument that the indictment is insufficient as a matter of law because it did not allege the existence of a specific, official duty that she was required by law to perform.

\*3 Nevertheless, we agree with the trial court that the indictment was deficient because it failed to identify with specificity what actions **Sledge** took or did not take that constituted misconduct in office and how those actions or inactions fall within her position's duties. Rather than dismissing the indictment as to **Sledge**, however, the trial court granted the prosecution an opportunity to cure the deficiencies by filing a bill of particulars. **Sledge** argues that allowing a bill of particulars is not permissible because the indictment was



insufficient as a matter of law. We, however, agree with the trial court that the indictment against **Sledge** can be amended or supplemented with a bill of particulars to cure the deficiency.

MCL 767.76 governs the amendment of indictments. It provides in pertinent part:

... The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury....

"The statute does not authorize the court to permit the changing of the offense nor the making of a new charge by way of amendment.... It permits only cure of defects in the statement of the offense which is already sufficiently charged to fairly apprise the accused and the court of its nature." *People v. Sims*, 257 Mich. 478, 481; 241 NW 247 (1932). Thus, "[a] new offense may not be added to an [indictment] by a motion to amend." *People v. McGee*, 258 Mich.App 683, 688; 672 NW2d 191 (2003).<sup>2</sup> In addition, MCL 767.75 provides that an indictment shall not be:

quashed, set aside or dismissed for any 1 or more of the following defects: (First) That there is a misjoinder of the parties accused; (Second) That there is a misjoinder of the offenses charged in the indictment, or duplicity therein; (Third) That any uncertainty exists therein. ... If the court be of the opinion that the third defect exists in any indictment, it may order that the indictment be amended to cure such defect. [Emphasis added.]

Finally, MCR 6.112 provides in pertinent part:

(E) **Bill of Particulars.** The court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense.

\* \* \*

(H) **Amendment of Information.** The court before, during, or after trial may permit the prosecutor to amend the [indictment] unless the proposed amendment would unfairly surprise or prejudice the defendant.... [Emphasis in original.]

\*4 In this case, it is apparent that the ordered bill of particulars does not allow the prosecution to add a new charge or offense against **Sledge**. However, it does permit the prosecution to remedy the lack of specificity as to the existing charges. With this limitation,



we find no error in the trial court's decision to permit the prosecution to file a bill of particulars. After the prosecution files its bill of particulars, **Sledge** may again challenge the sufficiency of the indictment<sup>3</sup> at which time the trial court will better be able to assess whether the alleged misconduct occurred while **Sledge** was exercising the duties of her office or acting under the color of her office. Further, the trial court will better be able to assess whether the third element of misconduct in office, corrupt behavior, was alleged with sufficient specificity.

#### B. COLLINS

The trial court dismissed the misconduct in office charges against Collins after finding that as a matter of law Collins was not a public officer.<sup>4</sup> The first element of the common law offense of misconduct in office is that the defendant must be a public officer. *Carlin (On Remand)*, 239 Mich.App at 64. Because Collins was not a public officer, we affirm.

In *People v. Coutu*, 459 Mich. 348, 354; 589 NW2d 458 (1999), our Supreme Court identified five elements to assist the courts in determining whether an individual is a public officer. The Court observed that to be considered a public officer, the individual's position must satisfy the following criteria:

- (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority;
- (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
- (5) it must have some permanency and continuity, and not be only temporary or occasional. [*Id.* (citation and quotation marks omitted).]

The existence of "[o]ath and bond requirements" may also assist in making this determination. *Id.* at 355.

We also consider MCL 15.181 which provides statutory definitions of the terms "public officer" and "public employee." MCL 15.181(e) defines a "public officer" as "a person who is elected or appointed<sup>[5]</sup> to any of the following:"

- (i) An office established by the state constitution of 1963.
- (ii) A public office of a city, village, township, or county in this state.
- (iii) A department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other



public entity of this state or a city, village, township, or county in this state. [Emphasis and footnote added.]

\*5 MCL 750.181(d) defines the term “public employee” as “an employee of this state, an employee of a city, village, township, or county of this state, or an employee of a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or of a city, village, township, or county in this state, but does not include a person whose employment results from election or appointment.”

In light of the relevant factors and the statutory definitions, we agree with the trial court's conclusion that Collins was not a public officer. The Department of Corporation Counsel was created in § 4.311 of the Wayne County Charter which provides that “[t]he director of the department is the Corporation Counsel. The director and deputy director shall be attorneys licensed to practice law in Michigan.”<sup>6</sup> By contrast, the position of assistant corporation council is not specifically referenced in the charter. Section 4.312 of the Wayne County Charter states that the Department of Corporation Counsel is to “provide legal services to the CEO, and all County agencies, and represent the County in all civil actions in which the County is a party,” and § 4.313 permits the Wayne County Commission and CEO to “obtain the services of separate legal counsel on a temporary basis.” However, the charter does not establish a permanent office of assistant corporation counsel or define qualifications, powers or duties pertaining to that office other than those that may be defined by the Corporation Counsel. Accordingly, Collins, in his role as assistant corporation counsel, is properly characterized as a public employee and not a public officer. Because he was not a public officer, the trial court did not err in dismissing the misconduct in office charges against him.

## II. WILLFUL NEGLECT OF DUTY

We next address whether the trial court erred in denying **Sledge's** motion to dismiss the charges of willful neglect of duty and in granting Collins' motion to dismiss the charges of willful neglect of duty.

Counts 3 and 4 of the indictment against **Sledge** and Collins provide:

### **Count 3 ...: Public Officer—Wilfull [sic] Neglect of Duty**

on or between October, 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the **Wayne County Commission**, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances; contrary to MCL 750.478....

### **Count 4: Public Officer—Wilfull [sic] Neglect of Duty**

on or between October, 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the **Wayne County Building Authority**, a duty enjoined upon him by State law and/or the Wayne County



Charter and/or Wayne County Ethics Ordinances; contrary to MCL 750.478.... [Emphasis in original.]

\*6 MCL 750.478 provides:

When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor[.]

Thus, the statute provides that to convict a defendant, the prosecution must establish (1) that the defendant was a public officer or "any person holding any public trust or employment," (2) that the defendant had a duty that is "enjoined by law," and (3) that the defendant willfully neglected to perform such duty. MCL 750.478.

In this case, the indictment identifies a very lengthy timeframe and wholly fails to identify what duty defendants allegedly were enjoined by law to perform. Instead, it asserts in general terms that state law, the Wayne County Charter, or the Wayne County Ethics Ordinances enjoined a duty upon defendants to fully and honestly inform the Wayne County Commission and the WCBA. There is nothing in Counts 3 and 4 that identify with any specificity what topics defendants were required to report upon, nor is it clear which portions, if any, of the cited legal authorities established the duty to report.

The trial court rightly found that, with respect to **Sledge**, the willful neglect of duty charges were deficient and it allowed for the prosecution to cure the defect by filing a bill of particulars. For the same reasons that the bill of particulars was proper with regard to the misconduct in office charges, we also conclude that the order to file a bill of particulars is proper with regard to the willful neglect of duty charges against **Sledge**.

The trial court, however, found that a bill of particulars would be unable to cure the deficiencies in willful neglect of duty charges against Collins and appeared to conclude that the charges were inapplicable to him because he was a public employee, not a public officer. We disagree. As it is written, the indictment asserts all of the requirements of the charge of willful neglect of duty. That is, it provides that Collins was enjoined by law to perform a duty and that he willfully neglected to perform said duty. What it lacks is specificity. Although the court concluded that Collins' only duty was to provide legal advice to the WCBA, without greater specificity in the indictment, it is impossible to determine whether the duty to provide legal advice was in fact breached. Accordingly, although the charges of willful neglect of duty against Collins are deficient, the prosecution should be allowed the opportunity to cure the defects in a bill of particulars.

### III. CONCLUSION

We affirm the trial court's order denying **Sledge's** motion to dismiss and ordering the prosecution to file a bill of particulars. We also affirm the trial court's order granting Collins' motion to dismiss the misconduct in office charges, but reverse the trial court's dismissal of



the charges of willful neglect of duty against Collins, and remand for further proceedings. On remand, the trial court shall allow each defendant the opportunity to challenge the sufficiency of the indictment after the respective bill of particulars has been filed. We do not retain jurisdiction.

### All Citations

Not Reported in N.W.2d, 2016 WL 3633124

### Footnotes

- 1 *People v. Sledge*, unpublished order of the Court of Appeals, entered January 4, 2016 (Docket No. 329626).
- 2 *McGee* dealt with the amendment of an information, not an indictment. However, MCR 6.112(A) provides that the rules and laws that apply to informations also apply to indictments.
- 3 **Sledge** also asserts that Counts 1 and 2 of the indictment should have been dismissed because MCL 750.505 expressly provides that it *does not* apply if the alleged misconduct is punishable under any other Michigan statute. She asserts that to the extent that Counts 1 and 2 sufficiently allege misconduct, the misconduct is punishable under MCL 750.478 (willful neglect of duty) and MCL 750.489 (false statement of public finances). We do not reach this issue because we find that the indictment lacks specificity and that the prosecution must file a bill of particulars to provide greater specificity. However, after the prosecution has filed its bill of particulars, **Sledge** may raise this argument anew before the trial court.
- 4 The trial court found that unlike Collins, **Sledge**, in her role as CFO, was a public officer. **Sledge** did not challenge that finding on appeal, and we see no need to sua sponte address it.
- 5 Wayne County Ordinances, § 40–3 defines an “appointed **official**” as “a **public** servant who is not elected, but rather is appointed by an elected official and holds either a compensated or uncompensated position.”
- 6 Based on the authority of Const 1963, art 7, § 2, “[a]ny county may ... adopt ... a county charter in a manner and with powers and limitations to be provided by general law...” In accordance with 1966 PA 293, the Legislature enacted the charter counties act (CCA), MCL 45.501 *et seq.* “Every county adopting a charter under the provisions of [the CCA] shall be a body corporate.” MCL 45.501. “Wayne County adopted a home-rule charter which took effect on January 1, 1983, establishing a county government with a chief executive officer in accordance with the [CCA.]” *Lucas v. Wayne Co Election Comm*,



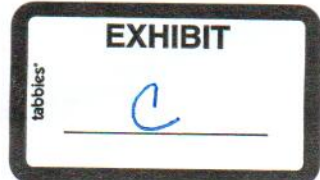
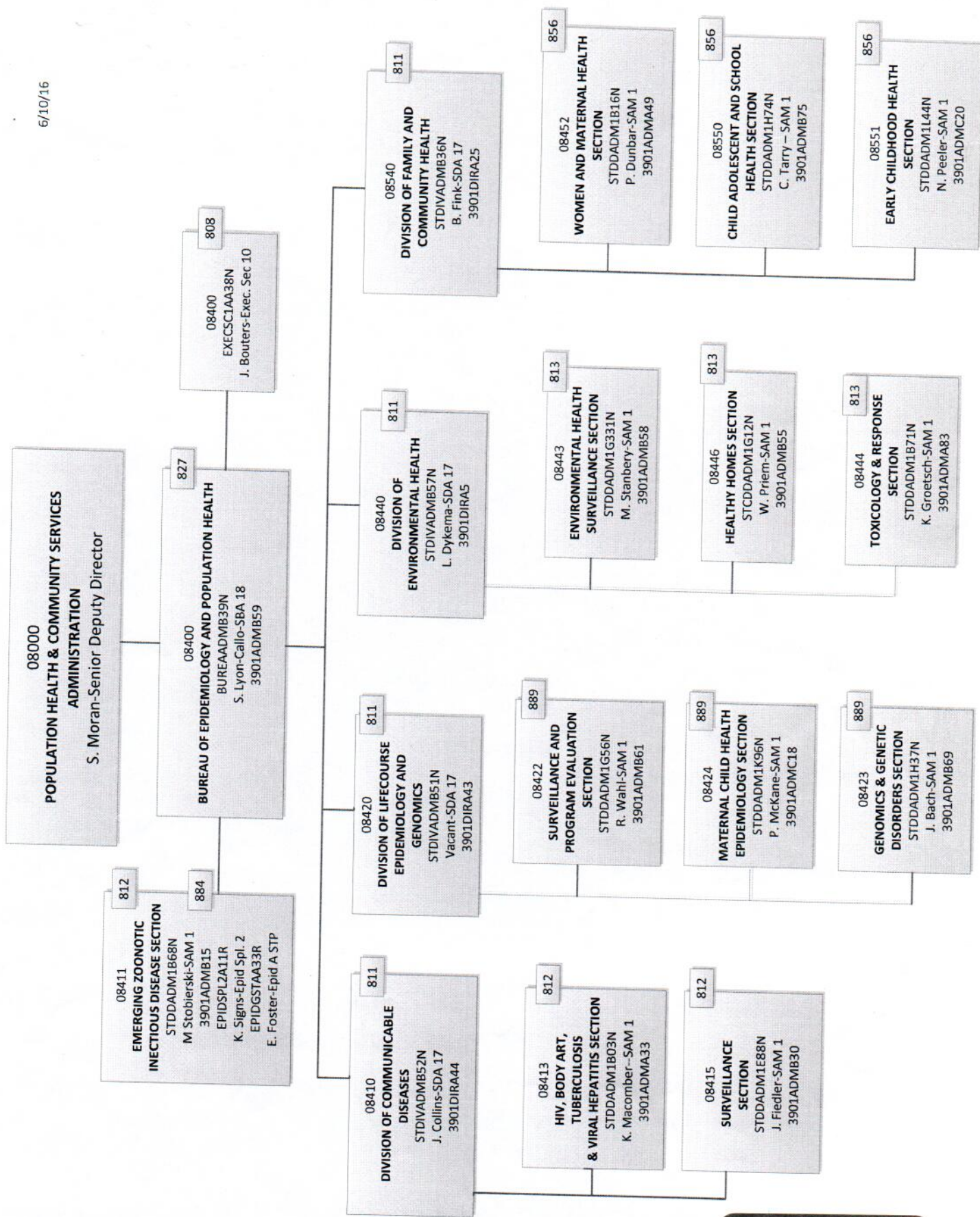
146 Mich.App 742, 744; 381 NW2d 806 (1985); see also Wayne County Charter, § 1.112.

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MICHIGAN CIVIL SERVICE COMMISSION  
JOB SPECIFICATION

STATE ADMINISTRATIVE MANAGER

JOB DESCRIPTION

Employees in this job assist in planning and directing a specialized area of the departmental mission. Under the supervision of a division or office administrator or higher level executive, the employee manages one or more agency-designated, Group 4 sections (work areas that include two or more professional employees with less than divisional or office standing), functions as an overall assistant director of a divisional or office program, or functions as a limited assistant director of a major office. The employee works within general policies and procedures and exercises considerable independent judgment in assisting in developing and implementing new approaches to departmental administration. The employee assists in the planning and directing of specific departmental activities and, in conjunction with management staff, reviews and evaluates the work of program personnel to ensure conformance with general guidelines, methods, techniques, policies, and laws. Supervisory functions include approving leaves, conducting service ratings, counseling and disciplining employees, participating in employee grievance procedures, and the hiring and training of personnel. All ECP Group 4 positions must be designated as such by the Appointing Authority and approved by Civil Service.

There are two classification levels in this job.

Position Code Title - State Administrative Manager-1

State Administrative Manager 15

The employee functions as an administrative manager of one or more agency-designated, Group 4 sections (work areas with less than division or office standing) and reports to a division, office, bureau, or senior deputy director.

Position Code Title - State Administrative Manager-2

State Administrative Manager 16

The employee functions as (1) an administrative manager of one or more agency-designated, Group 4 sections (work areas with less than division or office standing) and reports to a department director; (2) an overall assistant director of a divisional or office program; or, (3) a limited assistant director of a major office. A limited assistant is distinguished from an administrative manager by the number of sections reporting to it (3 or more) and is assigned executive assistant duties for the office director. (An office structure may not include both an overall assistant—at the 17 level—and limited assistants.)

JOB DUTIES

NOTE: The job duties listed are typical examples of the work performed by positions in this job classification. Not all duties assigned to every position are included, nor is it expected that all positions will be assigned every duty.

Plans, organizes, directs, and controls the work activities of a Group 4 program.

Formulates current and long-range programs, plans, and policies for a Group 4 program.

Coordinates work by scheduling assignments and directing the work of subordinate supervisors.

Directs the revision of rules, regulations, and procedures to meet changes in law or policy.



Develops budget recommendations for capital outlay, personnel services, equipment, and materials.

Analyzes the impact of federal, state, and local legislation, prepares position statements, and presents testimony at hearings.

Conducts staff meetings and conferences with assistants to discuss operating problems, organization, budgetary matters, personnel matters, technical problems, and the status of programs and projects.

Selects and assigns staff, ensuring equal employment opportunity in hiring and promotions, identifies staff development needs and ensures that training is obtained; ensures that proper labor relations and conditions of employment are maintained.

Confers with officials of federal, state, and local agencies, legislators, governor's aides, professional organizations, and interest groups on matters relating to the program.

Maintains records, prepares reports, and conducts correspondence relative to the work.

Performs related work as assigned.

## JOB QUALIFICATIONS

### Knowledge, Skills, and Abilities

Extensive knowledge of state and federal laws and legislative processes related to the work.

Extensive knowledge of federal, state, and local relationships that impact the operations of a department.

Extensive knowledge of current literature in the field.

Extensive knowledge of training and supervisory techniques.

Extensive knowledge of employee policies and procedures.

Thorough knowledge of state government organization and functions.

Thorough knowledge of the principles and techniques of administrative management including organization, planning, staffing, training, budgeting, and reporting.

Thorough knowledge of methods of planning, developing, and administering programs.

Thorough knowledge of fiscal planning and management.

Thorough knowledge of staffing requirements as to type, number, and training necessary for the accomplishment of program goals.

Thorough knowledge of labor relations and equal employment opportunity policies and procedures.

Thorough knowledge of public relations techniques.

Ability to instruct, direct, and evaluate employees.

Ability to plan, direct, and coordinate program and administrative activities of a complex, interrelated, and interdependent nature, where unknowns and numerous contingency factors are involved.

Ability to analyze and appraise facts and precedents in making administrative decisions.

Ability to formulate policies and procedures based on information of a conceptual nature from varied and complex sources.

Ability to establish and maintain effective relationships with government officials, private industry officials, professional personnel, and others.

Ability to communicate effectively.



### Working Conditions

None

### Physical Requirements

None

### Education

Possession of a bachelor's degree in any major.

### Experience

#### State Administrative Manager 15

Four years of professional experience, including two years equivalent to the experienced (P11) level or one year equivalent to the advanced (12) level.

#### State Administrative Manager 16

Five years of professional experience, including two years equivalent to a specialist or manager at the 13-level or higher.

### Alternate Education and Experience

#### State Administrative Manager 15

Education level typically acquired through completion of high school and two years of safety and regulatory or law enforcement experience at the 14 level; or, one year of safety and regulatory or law enforcement experience at the 15 level, may be substituted for the education and experience requirements.

#### State Administrative Manager 16

Education level typically acquired through completion of high school and three years of safety and regulatory or law enforcement experience at the 14 level; or, two years of safety and regulatory or law enforcement experience at the 15 level, may be substituted for the education and experience requirements.

### Special Requirements, Licenses, and Certifications

None

**NOTE:** Equivalent combinations of education and experience that provide the required knowledge, skills, and abilities will be evaluated on an individual basis.

### JOB CODE, POSITION TITLES AND CODES, AND COMPENSATION INFORMATION

#### Job Code

DEPDIVADM

#### Job Code Description

STATE ADMINISTRATIVE MANAGER

#### Position Title

State Administrative Manager-1

State Administrative Manager-2

#### Position Code

STDDADM1

STDDADM2

#### Pay Schedule

NERE-060P

NERE-061P

JZ

12/04/2012



APPLICATIONS

Live, Work, and Play

SUBMITTED INCOMPLETE

1 Submitted

Manager 15    Applied on 09/12/2014 11:40 PM Eastern    Selection Process Complete  
Health Section    [History](#)

ACCOUNT



# REQUEST FOR WARRANT

Page 3

## DETAILS OF INVESTIGATION (CONTINUED)

4. On or about April 2014 through November 2015, Defendant PEELER served as an Early Childhood Health Section Manager at MDHHS. During the relevant time period, Defendant PEELER, among other duties, was generally responsible for carrying out the mission of the MDHHS by “**promot[ing] and protect[ing] the health of the population as a whole through surveillance and respon[ding] to health issues, [the] prevention of illness and injury, improve[ing] . . . access to care, and [the] promotion of health equity.**” Exhibit 1 (emphasis added). As a manager, Defendant PEELER was required to have a thorough knowledge of the principles relative to receiving and analyzing the lead testing results data from across the state for use in monitoring the extent to which children are still lead poisoned and to inform policy and practice relative to the continuing need to prevent lead poisoning and to intervene as early as possible when it is detected. Defendant PEELER’s responsibilities included requesting and reviewing studies related to public health issues, including the lead poisoning of children in the State of Michigan.

## PUBLIC OFFICE

5. The MDHHS has broad oversight over community health programs and initiatives throughout the State of Michigan. The MDHHS is responsible for “**protect[ing], preserv[ing], and promot[ing] the health and safety of the people of Michigan, with particular attention to providing for the needs of vulnerable and underserved populations.**”

6. Specifically, the Michigan Public Health Code expressly provides that MDHHS must “[e]stablish procedures for reporting known or suspected cases of lead poisoning or undue lead body burden.” MCL 333.5111(f).

EXHIBIT

E



# EXHIBIT 1



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[Policy and Planning](#)

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[Reports & Statistics](#)

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[Tahir Tuesdays](#)

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[MDHHS](#) / [INSIDE MDHHS](#) / [CAREERS WITH MDHHS](#) / [ABOUT US](#)

## About Us

The Michigan Department of Community Health's mission is to protect, preserve, and promote the health and safety of the people of Michigan.

### Our Organization

Each year millions of Michigan residents receive services from the Michigan Department of Community Health (MDCH). We have an annual gross appropriation of billions of dollars, and over 3,000 employees.

We make a difference in people's lives through services that:



Promote health and wellness of families by working on disease, genomics, toxicology, environmental health, education, and public health preparedness

Provide mental health care to families, support for substance abuse and addiction, and operate the state's psychiatric hospitals

Preserve access to care and support health policy

Provide healthcare coverage for people with limited incomes through Medicaid

### Our Culture

We are all about people. Not only the people we serve, but our employees. Our dedicated staff promote wellness through education, outreach and the services we provide.

Our passion for the people we serve drives us to create innovative solutions that help accomplish our mission. Our best ideas come from our people. We value their ideas and recognize them for their contributions.

Every employee plays an important role in the success of our department. We embrace diversity and value each other's opinion, to better serve our customers.

**"It is good to know  
that those who lead  
take the time to listen.  
DCH is a great place  
to work!"**



As the MDCH expands its team, we continue to look for compassionate employees who share our level of enthusiasm to deliver quality, health-related services.

## Our History

Over the years, the MDCH has gone through many changes and has accomplished a great deal. Since 1873, our goal has been the same, to educate and protect the health of the public and our community. Here are a few highlights:

### Year MDCH Highlight

- 1873 The State Board of Health was established.
- 1909 The State Board of Health gained authority over water supply.
- 1921 The responsibility for the collection and compilation of vital statistic was transferred from the Secretary of State to the Michigan Department of Health.
- 1938 The Michigan Department of Health in Lansing & the Michigan Department of Health's Western Branch Laboratory developed the first successful whooping cough vaccine.
- 1950 The department became famous throughout the world for its work and manual on industrial ventilation.
- 1970 The anthrax vaccine was manufactured by the Michigan Department of Public Health.
- 1996 The MDCH was created by consolidating the Department of Public Health, the Department of Mental Health and the Medical Services Administration (the state's Medicaid agency).
- 1997 The Office of Drug Control Policy and the Office of Services to the Aging were consolidated with the MDCH.
- 2002 The Office of Public Health Preparedness & Response to Bioterrorism was created.
- 2006 The MDCH launched the Problem Gambling, Meth Awareness and Emergency Preparedness websites.
- 2010 Smoke-Free Law takes effect May 1st.

## Our Future

The MDCH will be the national leader in the design and implementation of health strategies that are culturally responsive and competent, customer-driven and community based.

Our team is dedicated to delivering quality health-related services to the people of Michigan by hiring the best talent, utilizing a diverse workforce, implementing innovative solutions and leveraging technology.

## Connect



## Online Services

- Child Support
- MI Bridges: Apply for Assistance & Manage Your Account
- Submit a FOIA Request
- Report Welfare Fraud
- Verify Health Professional License
- Cardiovascular Health and Nutrition: An Online Self-Test
- Birth, Death, Marriage, Divorce Certificates
- E-license - Renew Health

## Join The Conversation

# Vision, Mission, and Values

## State of Michigan Values

Governor Snyder is seeking to reinvent Michigan, saying, "Our state government has to be innovative and efficient in order to deliver the services citizens deserve with the revenue it has available. Individuals and organizations are working together in unprecedented ways to reinvent our government with a common goal in mind: providing world-class service that supports, drives, and enables prosperity for Michigan's residents and businesses." The key elements of the governor's initiative are performance management, service and process optimization, employee engagement, and change management. The values that underpin this work are that state government be customer-centered, efficient, effective, transparent, and accountable.

## Michigan Department of Community Health Vision and Mission

During 2012, the Michigan Department of Community Health undertook a strategic planning process to align its activities with the governor's focus areas. This process resulted in new vision and mission statements for the Michigan Department of Community Health, along with several strategic priorities:

- The department's vision is improving the experience of care, improving the health of populations, and reducing per capita costs of health care.
- The mission of the Michigan Department of Community Health is to protect, preserve, and promote the health and safety of the people of Michigan, with particular attention to providing for the needs of vulnerable and underserved populations.
- The department's strategic priorities are grouped into four categories: improve population health; transform the system of care; reform the health system; and transform the Michigan Department of Community Health (Appendix A).

## Public Health Administration Vision, Mission, and Guiding Principles

The vision, mission, and principles identified during the Public Health Administration's strategic planning process are guided by and support the vision and mission of the Michigan Department of Community Health, as well as the values for state government articulated by Governor Snyder.

### Our Vision

*Michigan's Public Health Administration, a nationally recognized state public health agency, leads efforts to create an environment where all people can lead healthier, safer lives.*

### Our Mission

*The Public Health Administration promotes and protects the health of the population as a whole through surveillance and response to health issues, prevention of illness and injury, improvements in access to care, and promotion of health equity.*

The core functions of public health—assessment, policy development, and assurance—will continue to be important, with an even greater emphasis on prevention and transformation in the delivery of services. The Public Health Administration will be a source of expertise, data, information, and technical assistance for all partners engaged in population health improvement.





# EXHIBIT 2

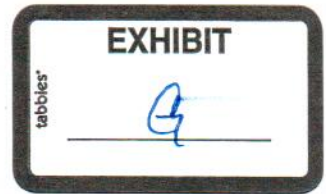
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**From:** Muchmore, Dennis (GOV)  
**Sent:** Wednesday, July 22, 2015 3:04 PM  
**To:** Lyon, Nick (DCH)  
**Subject:** Flint

I'm frustrated by the water issue in Flint. I really don't think people are getting the benefit of the doubt. Now they are concerned and rightfully so about the lead level studies they are receiving from the DEQ samples. Can you take a moment out of your impossible schedule to personally take a look at this? These folks are scared and worried about the health impacts and they are basically getting blown off by us (as a state we're just not sympathizing with their plight).



WESTLAW



Michigan Compiled Laws Annotated

Chapter 333. Health

Public Health Code (Refs & Annos)

**333.5474. Lead poisoning prevention program; establishment, components, report**  
Michigan Compiled Laws Annotated Chapter 333. Health (Approx. 2 pages)  
& Annos)

Part 54a. Lead Abatement

**Proposed Legislation**

**M.C.L.A. 333.5474**

**333.5474. Lead poisoning prevention program; establishment,  
components, report**

Currentness

Sec. 5474. (1) The department shall establish a lead poisoning prevention program that has the following components:

- (a) A coordinated and comprehensive plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards.
- (b) A comprehensive educational and community outreach program regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public schools, owners and tenants of residential dwellings, and parents of young children. These educational materials shall be made available, upon request, to local and state community groups, legal services organizations, and tenants' groups.
- (c) A technical assistance system for health care providers to assist those providers in managing cases of childhood lead poisoning. As part of this system, the department shall require that results of all blood lead level tests conducted in Michigan be reported to the department as provided for in rule and that when the department receives notice of blood lead levels above 10 micrograms per deciliter, it shall initiate contact with the local public

health department or the physician, or both, of the child whose blood lead level exceeds 10 micrograms per deciliter.

(2) The department shall report to the legislature by January 1, 1999, and annually thereafter, the number of children through age 6 who were screened for lead poisoning during the preceding fiscal year and who were confirmed to have had blood lead levels above 10 micrograms per deciliter. The report shall compare these rates with those of previous fiscal years and the department shall recommend methods for improving compliance with guidelines issued by the federal centers for disease control and prevention, including any necessary legislation or appropriations.

(3) Not more than 1 year after the effective date of this part, and annually thereafter, the department shall prepare a written report regarding the expenditures under the lead poisoning prevention program including the amounts and sources of money from the previous year and a complete accounting of its use. The report shall be given to the appropriate committees of the legislature and be made available to the general public upon request.

#### **Credits**

P.A.1978, No. 368, § 5474, added by P.A.1998, No. 219, Imd. Eff. July 1, 1998.

M. C. L. A. **333.5474**, MI ST **333.5474**

The statutes are current through P.A.2016, No. 563 of the 2016 Regular Session, 98th Legislature.

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**DEPARTMENT OF COMMUNITY HEALTH**  
**DIVISION OF FAMILY AND COMMUNITY HEALTH**  
**BLOOD LEAD ANALYSIS REPORTING**

(By authority conferred on the department of community health by 1978 PA 368, MCL 333.5111(1) and (2)(f), 333.5474(1)(c), and 333.20531; 1978 PA 312, MCL 325.72(a)(i), MCL 325.78; and Executive Reorganization Order No. 1996-1, MCL 330.3101)

**R 325.9081 Definitions.**

Rule 1. (1) As used in these rules:

- (a) "department" means the department of community health.
- (b) "Physician/provider" means a licensed professional who provides health care services and who is authorized to request the analysis of blood specimens. For this purpose, provider may also mean the local health department.
- (c) "Portable blood lead analyzer" means a point-of-care blood lead testing instrument or similar device used to test blood lead levels.
- (d) "User" means a physician/provider, local health department, Head Start agency, community action agency, and other agencies or individuals who utilize portable blood lead analyzers.

(2) The term "local health department," as defined in section 1105, 1978 PA 368, MCL 333.1105, has the same meaning when used in these rules.

History: 1997 AACCS; 2015 AACCS.

**R 325.9082 Reportable information.**

Rule 2. (1) Reportable information pertains to the analysis of blood samples submitted to clinical laboratories and the results from portable blood lead analyzers.

(2) Upon initiating a request for blood lead analysis, the physician/provider or user ordering the blood lead analysis shall collect the following information:

(a) All of the following information with respect to the individual tested:

- (i) Name.
- (ii) Sex
- (iii) The individual's ethnicity including either of the following:
  - (a) Hispanic or Latino/Latina.
  - (b) Not Hispanic or Latino/Latina.
- (iv) The individual's race, noting the following:
  - (a) American Indian or Alaska Native.
  - (b) Asian.
  - (c) Black or African American.
  - (d) Native Hawaiian or Other Pacific Islander.
  - (e) White or Caucasian.
- (v) Birthdate.

(vi) Address, including county, and, to the extent available, whether the residence or property is owned or rented.

(vii) Telephone number.

(viii) Social security number and Medicaid number, if applicable.

(ix) If the individual is a minor, the name of a parent or guardian.

(x) If the individual is an adult, the name of his or her employer.

(xi) A secondary contact for the individual tested or, if the individual is a minor, a secondary contact for the individual's parent or guardian, including, to the extent available, name and phone number of the secondary contact.

(b) The date of the sample collection.

(c) The type of sample (capillary or venous).

(d) The physician's/provider's or user's name, name of practice (if applicable), telephone number, fax number, email address, and mailing address.

(3) The information collected in subrule (2) of this rule shall be submitted with the sample for analysis to a clinical laboratory that performs blood lead analysis or a user of a portable blood lead analyzer.

(4) Upon receipt of the blood sample for lead analysis, the clinical laboratory or user of a portable blood lead analyzer shall collect the following additional information:

(a) The name, address, and phone number of the laboratory or testing entity.

(b) The date of analysis.

(c) The specimen number.

(d) The results of the blood lead analysis in micrograms of lead per deciliter of whole blood rounded to the nearest whole number.

History: 1997 AACCS; 2015 AACCS.

### **R 325.9083 Reporting responsibilities.**

Rule 3. (1) All clinical laboratories and users of portable blood lead analyzers doing business in this state that analyze blood samples for lead shall report all blood lead results, rounded to the nearest whole number, for adults and children to the department electronically consistent with R 325.9084. If a result and required reportable information under R 325.9082 cannot be reported electronically within the time frame specified by this rule, then the results shall be submitted to the Michigan Department of Community Health, Childhood Lead Poisoning Prevention Program (CLPPP), 109 W. Michigan Avenue, Lansing, MI 48909 or (517) 335-8509 (facsimile). Reports shall be made to the department within 5 working days after test completion. Nothing in these rules shall prevent a person or entity required to report under these rules from reporting results to the department sooner than 5 working days.

(2) Nothing in this rule shall be construed to relieve a clinical laboratory or a user of a portable blood lead analyzer from reporting results of a blood lead analysis to the physician or other health care provider who ordered the test or to any other entity as required by state, federal, or local statutes or regulations or in accordance with accepted standard of practice, except that reporting in compliance with this rule satisfies the blood lead reporting requirements of 1978 PA 368, MCL 333.1101 to 333.25211.

History: 1997 AACCS; 2015 AACCS.



**R 325.9084 Electronic communications.**

Rule 4. (1) A clinical laboratory or user of a portable blood lead analyzer shall submit the data required in R 325.9082 and R 325.9083 electronically to the department.

(2) For electronic reporting, upon mutual agreement between the reporting clinical laboratory or user of a portable blood lead analyzer and the department, the reporting shall utilize the data format specifications provided by the department.

History: 1997 AACCS; 2006 AACCS; 2015 AACCS.

**R 325.9085 Quality assurance.**

Rule 5. For purposes of assuring the quality of submitted data, each clinical laboratory or user of a portable blood lead analyzer shall allow the department to inspect copies of the medical records that will be submitted by the clinical laboratory or user of a portable blood lead analyzer to verify the accuracy of the submitted data. Only the portion of the medical record that pertains to the blood lead testing shall be submitted. The department shall protect the medical records submitted using reasonably appropriate privacy and security safeguards regardless of whether the medical records are received by the department in electronic or hard copy form. After verification of submitted data, the department shall promptly destroy the copies of the medical records.

History: 1997 AACCS; 2015 AACCS.

**R 325.9086 Confidentiality of reports.**

Rule 6. (1) Except as provided in subrule (2) of this rule, the department shall maintain the confidentiality of all reports of blood lead tests submitted to the department and shall not release reports or information that may be used to directly link the information to a particular individual.

(2) The department may release reports or information, otherwise protected under subrule (1) of this rule, under any of the following conditions:

(a) If the department has received written consent from the individual, or from the individual's parent or legal guardian, requesting the release of information.

(b) If necessary for law enforcement investigation or prosecution of a property manager, housing commission, or owner of a rental unit under section 5475a, 2004 PA 434, MCL 333.5475a.

(c) If the director of the department determines that release is crucial to protect the public health against imminent threat or danger.

(d) As necessary for the department to carry out its duties under 1978 PA 368, MCL 333.1101 to 333.25211.

(e) If necessary for the purpose of research designed to develop or contribute to generalizable knowledge, with documented approval by the department's institutional review board.

(f) If necessary for the purpose of public health activities designed to prevent lead poisoning within a community.

(3) Medical and epidemiological information that is released to a legislative body shall not contain information that identifies a specific individual. Aggregate epidemiological information concerning the public health that is released to the public for informational purposes only shall not contain information that identifies a specific individual.

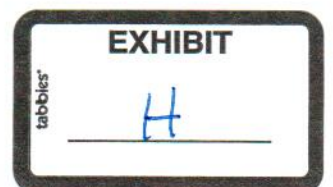
History: 1997 AAC; 2006 AAC; 2015 AAC.

**R 325.9087 Rescinded.**

History: 1997 AAC; 2015 AAC.



# EXHIBIT 6



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**From:** Lyon, Nick (DCH)  
**Sent:** Friday, July 31, 2015 10:57 AM  
**To:** Muchmore, Dennis (GOV); Workman, Wayne (TREASURY); Wurfel, Brad (DEQ); Clement, Elizabeth (GOV); Hollins, Harvey (GOV)  
**Cc:** Saxton, Thomas (Treasury); Wisniewski, Wendy (GOV); Grijalva, Nancy (DCH)  
**Subject:** Re: Updated Memo on Water Coalition Questions - July 29  
**Attachments:** Flint Testing and EBLLs\_2.xlsx

Our Public Health staff followed up a bit more on the lead question. Below is their email update to me.

From: Grijalva, Nancy (DCH)  
Sent: Wednesday, July 29, 2015 11:23 AM  
To: Lyon, Nick (DCH)  
Subject: FW: Director's Office Assignment -- Flint - need update asap  
FYI.....

-----Original Message-----

From: Peeler, Nancy (DCH)  
Sent: Tuesday, July 28, 2015 2:57 PM  
To: Anderson, Paula (DCH); Miller, Corinne (DCH); Travis, Rashmi (DCH); Moran, Susan (DCH); Grijalva, Nancy (DCH); Fink, Brenda (DCH)  
Cc: Priem, Wesley F. (DCH); Dykema, Linda D. (DCH); Bouters, Janese (DCH); Barr, Jacqui (DCH)

Subject: RE: Director's Office Assignment -- Flint - need update asap

I apologize for the delay in responding more specifically to this assignment, it took some time to review our Childhood Lead Poisoning Prevention program data to see if it might contribute to the understanding of the situation in Flint with their water supply. Here is what we found:

We looked at lead testing results for May 2014-April 2015, which is the 12 month time frame just after Flint started drawing their water from the river (water source changed in April 2014).

We compared lead testing rates and lead testing results to the same time frame for the previous 3 years, to see if there were any patterns that suggested that there were increased rates of lead poisoning after the water supply was switched. Per the attached charts –

- Lead testing rates remained about the same from year to year (chart on the right).
- There was a spike in elevated blood lead tests from July-September 2014 (chart on the left, gold line).
- However that pattern was not terribly different from what we saw in the previous three years, especially in 2011-2012 (we are working with our Epidemiologist to statistically verify any significant differences).
- We commonly see a 'seasonal effect' with lead, related to people opening and closing windows more often in the summer, which disturbs old deteriorating paint on the windows, sills and sashes. Window fans frequently blow and spread the lead dust from the deteriorating paint to other parts of the room/house. We suspect that the summer data spike may be related to this effect.
- If the home water supply lines and/or river water were contributing to elevated blood lead tests, we



expected that the increased rates would extend beyond the summer, but they drop quite a bit from September to October, stayed low over the winter, and are just starting to tail up again in the spring of 2015.

So upon review, we don't believe our data demonstrates an increase in lead poisoning rates that might be attributable to the change in water source for Flint. We recognize that lead exposure via the water is only a small piece of what may be happening for families in Flint, however, we hope the information is helpful.

Nancy Peeler

---

**From:** Muchmore, Dennis (GOV)  
**Sent:** Wednesday, July 29, 2015 9:02 AM  
**To:** Workman, Wayne (TREASURY); Wurfel, Brad (DEQ); Lyon, Nick (DCH); Clement, Elizabeth (GOV); Hollins, Harvey (GOV)  
**Cc:** Saxton, Thomas (Treasury); Wisniewski, Wendy (GOV)  
**Subject:** RE: Updated Memo on Water Coalition Questions - July 29

I think this information is very helpful. It will not answer the main question about the quality of the water (DEQ is working on that through Brad I believe), and the color and smell of the present water, but it does get us to the answers to the less subjective issues. Frankly, the only way the issues will be totally resolved is when the KWA comes on line and the water is perceived to be cleaner and healthier.

I am somewhat surprised that the leadership in Flint has not responded better to the community questions, which don't seem unreasonable at all. Seems like Harvey has a better network into some of the neighborhoods than the city does. The KWA PR department definitely needs to do some outreach or they're headed down the same road as DWSD. Do you know if they go out on a regular basis to the community and talk about the rates, costs, etc.?

---

**From:** Workman, Wayne (TREASURY)  
**Sent:** Wednesday, July 29, 2015 8:36 AM  
**To:** Muchmore, Dennis (GOV); Wurfel, Brad (DEQ); Lyon, Nick (DCH); Clement, Elizabeth (GOV)  
**Cc:** Saxton, Thomas (Treasury); Wisniewski, Wendy (GOV)  
**Subject:** FW: Updated Memo on Water Coalition Questions - July 29  
**Importance:** High

All, Attached is a memo and water rate summary answering several of the questions raised by the Flint pastors. Please let me know if you have any questions. Wayne

Wayne L. Workman  
Deputy State Treasurer  
Michigan Department of Treasury

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**From:** Cline, Richard (Treasury)  
**Sent:** Wednesday, July 29, 2015 8:21 AM  
**To:** Workman, Wayne (TREASURY)  
**Cc:** Dempkowski, Angela (Treasury); Byrne, Randall (Treasury)  
**Subject:** Updated Memo on Water Coalition Questions - July 29  
**Importance:** High

Wayne,

# **EXHIBIT 7**



**Scott, Robert L. (DHHS)**

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**From:** Scott, Robert L. (DCH)  
**Sent:** Friday, September 11, 2015 1:31 PM  
**To:** 'Marc Edwards'  
**Subject:** RE: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.  
**Attachments:** DCH-1294 Data Use and Non-Disclosure Agreement Edwards 091115.doc

Marc,

OK, I submitted your request including your proposal and the paragraph below. No guarantees on the timing, though. I've attached a copy of the DCH-1294 here, because I made a few edits based on my previous experience with the review process.

Bob

**From:** Marc Edwards [mailto:edwardsm@vt.edu]  
**Sent:** Friday, September 11, 2015 1:03 PM  
**To:** Scott, Robert L. (DCH) <ScottR9@michigan.gov>  
**Subject:** RE: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Yes, I think there is clearly some urgency to the situation. MDEQ has publicly stated that your blood lead records, are showing that there is no public health concern for residents in Flint.

The levels of lead in Flint water, that we are finding in our water sampling, are certainly in a range that can cause childhood lead poisoning.

Indeed, one child has already, likely been lead poisoned from exposure to high lead in water.

I think the fact that you already have other teams working on these records, indicates a high level of interest, and urgency.

Congressional interest in the safety of the water is also very high, and this will be an important issue in deciding options for treating the water, in the weeks and months ahead.

Best Regards,

Marc

---

**From:** Scott, Robert L. (DCH) [mailto:ScottR9@michigan.gov]  
**Sent:** Friday, September 11, 2015 12:58 PM  
**To:** Marc Edwards  
**Subject:** RE: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Maybe. My contact at Legal let me know the other day that he's unusually busy with other matters right now, so his review of DUAs might be delayed unless there was a specific reason for quicker action on his part.

If you are in need of a reasonably-quick turnaround—i.e., a week rather than a month or so—then please send me a paragraph explaining why. I'll pass that along with your DUA.

If you're not in a hurry, then I'm all set for now—I'll submit your DUA as is.

From: Marc Edwards [mailto:edwardsm@vt.edu]  
Sent: Thursday, September 10, 2015 7:57 PM  
To: Scott, Robert L. (DCH) <ScottR9@michigan.gov>  
Subject: RE: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Do you need anything else from me?  
Marc

From: Marc Edwards [mailto:edwardsm@vt.edu]  
Sent: Tuesday, September 08, 2015 5:39 PM  
To: 'Scott, Robert L. (DCH)'  
Subject: RE: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Here you go.

Best Regards,  
Marc

From: Scott, Robert L. (DCH) [mailto:ScottR9@michigan.gov]  
Sent: Tuesday, September 08, 2015 7:55 AM  
To: Marc Edwards  
Subject: RE: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Yes, sorry for the delay; I'll get you a more complete answer later today.

From: Marc Edwards [mailto:edwardsm@vt.edu]  
Sent: Monday, September 07, 2015 11:40 AM  
To: Scott, Robert L. (DCH) <ScottR9@michigan.gov>  
Subject: FW: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Robert,

Can you confirm that you received the e-mail below, with the request for blood lead data on Flint?

Marc

From: Marc Edwards [mailto:edwardsm@vt.edu]  
Sent: Wednesday, September 2, 2015 8:36 PM  
To: 'scottrob@michigan.gov' <scottrob@michigan.gov>  
Subject: Repeat of 2006 study request, but for Flint and Genesee County and Detroit zip codes, from January 1 2011 to present.

Hi Robert,



I would like to repeat the study I did below, but updated for Flint Michigan, Genesee County Michigan, and Detroit. What I need is blood lead data from all Flint zip codes, Genesee County zip codes and Detroit zip codes from 2011 to present.

Please do not identify the records by name, but have an ID code for each individual that can be sorted, along with the date of the measurement, blood lead result, zip code in which the child resides, and child's birth date so I can determine the age of the subject.

The intervention of interest, is the change from Detroit water to Flint River water, in Flint Michigan. Genesee County and Detroit serve as control data sets.

If it can be provided in a format that can be read into EXCEL, that would be best.

Let me know if you need a new signed data sharing agreement, or whether our agreement from 2006 is still ok.

Best Regards,  
Marc Edwards

Date: Fri, 17 Nov 2006 15:41:55 -0500  
To: "Robert L. Scott" <[scottrob@michigan.gov](mailto:scottrob@michigan.gov)>  
From: Marc Edwards <[edwardsm@vt.edu](mailto:edwardsm@vt.edu)>  
Subject: Proposal and signed data agreement

Robert,

Attached is my signed agreement. My proposal is to do a study of potential benefits resulting from a community intervention in Lansing, MI.

Specifically, last year Lansing distributed drinking water filters and sent out enhanced flushing instructions to mitigate levels of lead in drinking water in homes with lead pipes. I am trying to determine whether this intervention had any discernable benefit on blood lead levels in the population.

To conduct this statistical test, I would like the following fields extracted from your database:

- 1) City of Lansing blood lead values, draw dates, and subject ID number from January 1, 2001 to present. If you do not have accessible data starting in 2001, then go back as far as you can (e.g., 2002).
- 2) The same data for Ingham County (which I assume includes Lansing). If it is possible to get all data from within Ingham County but excluding Lansing that would be ideal. But I could presumably delete the duplicate data between set 1 and set 2 by hand if necessary.
- 3) The same data for the city of Detroit MI.

The statistical comparison will examine 1) temporal changes in % elevated blood lead for Lansing before and after the intervention, and 2) cross comparisons in trends between Lansing (with intervention) and Detroit and Ingham County (without intervention).

This is a fairly straightforward test that I suspect will confirm that no significant change arose due to the intervention in Lansing, consistent with water as a minor contributor to blood lead in Lansing.

If you should have additional questions please e-mail me at this address or call me at 540 231-7236,

Regards,  
Marc Edwards

At 03:14 PM 11/17/2006, Robert L. Scott wrote:  
Thanks for the info. Please see attached. Just a reminder that a  
"proposal" is also required. It need not be particularly long or  
formal, but should indicate clearly the data requested, and what you  
intend to do with it.



# **EXHIBIT 8**

Scott, Robert L. (DHHS)

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From: Scott, Robert L. (DCH)  
Sent: Friday, September 11, 2015 1:09 PM  
To: Peeler, Nancy (DCH); 'Lishinski Karen (LishinskiK@michigan.gov)'; Priem, Wesley F. (DCH)  
Subject: Flint water study  
Attachments: Rapid Proposal Final.pdf

Nancy, Karen and Wes,

I'm passing this along as follow-up to our previous attention to the Flint water changeover situation. The attached was submitted to me along with a request for de-identified data, which should be no problem.

When you have a few minutes you might want to take a look at it. Sounds like there might be more to this than what we learned previously. Yikes!

Robert L. Scott  
Childhood Lead Poisoning Prevention Program  
Michigan Department of Health & Human Services  
(517) 335-8178  
fax (517) 335-8509



Pending Data Sharing Agreements

Organization/Individual	Date Initiated	Revised/Responsible?	Status	Web Caption	Date last action	MOU development?
Center for Urban Studies	6/2/2015	yes	discussed with Colin		7/2/2015	no
ChenCorp	6/4/2015	yes	discussed with Colin		7/2/2015	no
GenCorp/MT	6/2/2015	yes	discussed with Colin		7/2/2015	no
DDC	6/16/2015	yes	discussed with Colin		8/2/2015	no
Healy & Grady, MSU	6/23/2015	yes	not submitted to Colin		8/25/2015	no
TandemTerra	8/5/2015	yes	submitted to Colin		8/27/2015	no
McGarry, MSZ	8/16/2015	yes	submitted to Colin		8/19/2015	no
Common, Virginia Tech	8/7/2015	yes	submitted to McGarry			
Hanna-John, Peirce	9/22/2015	yes	Approved	Approved	10/2/2015	no

8/1/2015 still waiting for LG to send MTT 2015  
1st email asking for changes, also suggesting work for Knapman/Underwood mark. Both phone meetings, 1st email explaining the project.

Send feedback to Heather, asking for revised 2014-2015 and 2015-2016 and MDC 100 app.

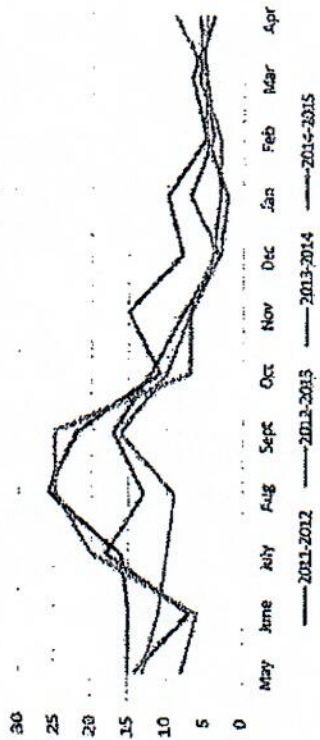
Update Colin when you get 1st response.

Revised with web caption

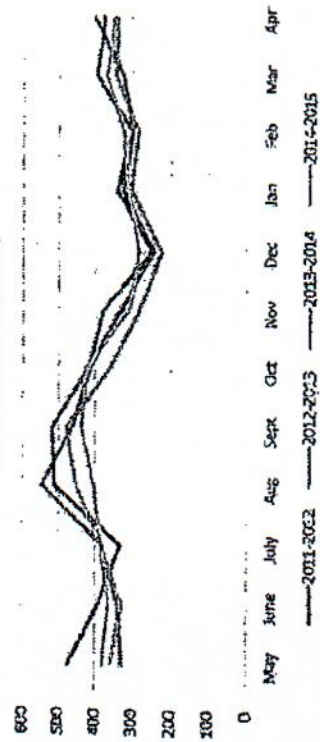
Data sheet

8/25/2015  
made \*

City of Flint, Children less than 16 years of age  
with First-Time Elevated Blood Lead Levels



City of Flint, Children less than 16 years of age  
Tested for Lead Poisoning

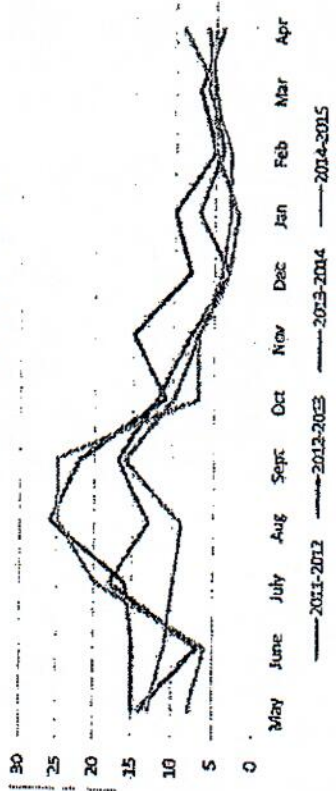


	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
2011-2012	15	15	16	26	22	11	15	8	10	5	7	4
2012-2013	14	7	18	13	17	12	8	3	7	4	5	6
2013-2014	13	11	10	9	16	19	7	4	3	3	6	5
2014-2015	8	6	20	25	25	7	7	3	2	5	5	9

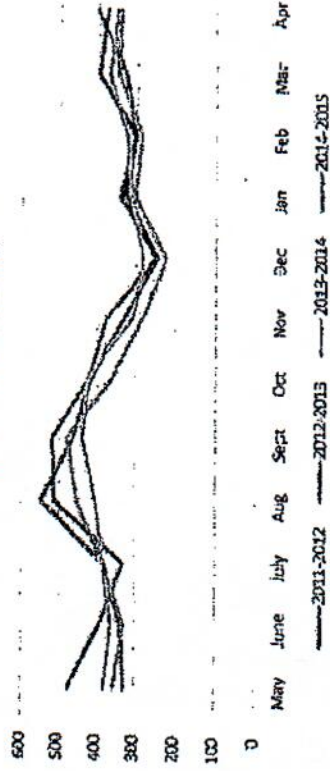
	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
2011-2012	474	393	532	513	520	420	379	249	343	303	399	375
2012-2013	328	338	383	550	454	417	332	246	328	303	328	402
2013-2014	380	363	585	404	438	427	310	283	313	325	371	346
2014-2015	356	325	586	452	480	361	283	224	205	287	348	339



City of Flint, Children less than 16 years of age  
with First-Time Elevated Blood Lead Levels



City of Flint, Children less than 16 years of age  
Tested for Lead Poisoning



Year	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
2011-2012	15	15	16	26	22	11	15	8	10	5	7	4
2012-2013	14	7	18	13	17	12	8	3	7	4	5	6
2013-2014	13	11	10	9	16	10	7	4	3	3	6	5
2014-2015	8	6	20	25	25	7	7	3	2	5	5	9

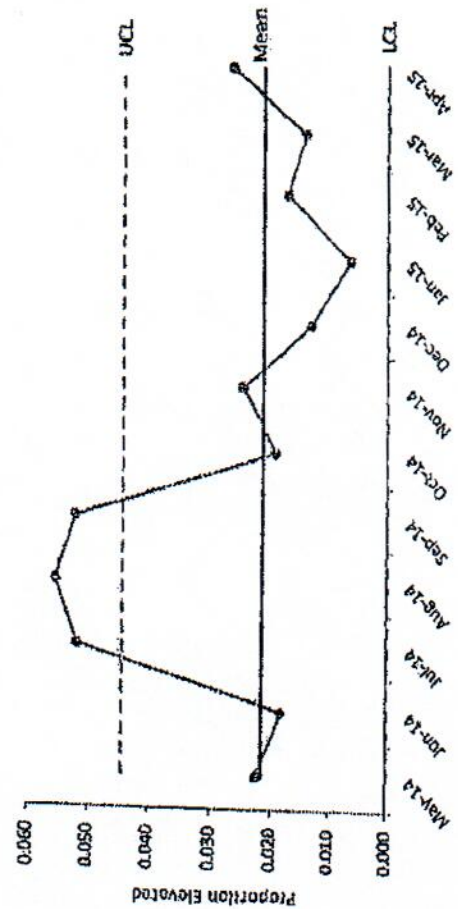
Year	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
2011-2012	474	393	332	513	520	420	379	249	343	303	359	375
2012-2013	328	338	383	550	464	417	332	246	328	303	328	402
2013-2014	380	363	385	404	438	427	310	283	313	325	371	346
2014-2015	356	329	386	452	480	361	283	224	305	287	348	339

Date	Elevated	Tested	Proportion	Mean P	P LCL	P UCL
May-13	13	380	0.034	0.022	0	0.04
Jun-13	11	363	0.030	0.022	0.00	0.04
Jul-13	10	385	0.026	0.022	0.00	0.04
Aug-13	9	404	0.022	0.022	0.00	0.04
Sep-13	16	438	0.037	0.022	0.00	0.04
Oct-13	10	427	0.023	0.022	0.00	0.04
Nov-13	7	310	0.023	0.022	0.00	0.04
Dec-13	4	283	0.014	0.022	0.00	0.04
Jan-14	3	313	0.010	0.022	0.00	0.04
Feb-14	3	325	0.009	0.022	0.00	0.04
Mar-14	6	371	0.016	0.022	0.00	0.04
Apr-14	5	346	0.014	0.022	0.00	0.04
May-14	8	356	0.022	0.022	0.00	0.04
Jun-14	6	329	0.018	0.022	0.00	0.04
Jul-14	20	386	0.052	0.022	0.00	0.04
Aug-14	25	452	0.055	0.022	0.00	0.04
Sep-14	25	480	0.052	0.022	0.00	0.04
Oct-14	7	361	0.019	0.022	0.00	0.04
Nov-14	7	283	0.025	0.022	0.00	0.04
Dec-14	3	224	0.033	0.022	0.00	0.04
Jan-15	2	305	0.007	0.022	0.00	0.04
Feb-15	5	287	0.017	0.022	0.00	0.04
Mar-15	5	348	0.014	0.022	0.00	0.04
Apr-15	9	339	0.027	0.022	0.00	0.04

2013/14  
Mean P 0.022  
Mean n 362.08

**$\bar{p}$ -chart**

$UCL = \bar{p} + 3\sqrt{\frac{\bar{p}(1-\bar{p})}{n}}$   
 Center Line:  $\bar{p}$   
 $LCL = \bar{p} - 3\sqrt{\frac{\bar{p}(1-\bar{p})}{n}}$





# **EXHIBIT 9**

From: Tanner, Kristi [mailto:ktanner@freepress.com]  
Sent: Friday, September 25, 2015 12:16 PM  
To: Minicuci, Angela (DCH) <MinicuciA@michigan.gov>  
Subject: Flint follow-up

Hi Angela,

Thanks for the feedback yesterday. I took a look at the numbers last night that you sent over and the year over year increase between 13/14 and 14/15 is statistically significant  $p < .05$ . Can you ask your epidemiologist to confirm? Also, is this the first significant increase that Flint has seen for this cohort? Thanks!

Kristi  
(313) 222-8877 office  
(586) 322-2094 cell

Children in Flint, less than 16 years of age, tested for lead

Children with Elevated BLL*			Children Tested**	
May 2010 - April 2011	168	0.043796	May 2010 - April 2011	3,836
2011-2012	153	0.036085	2011-2012	4,240
2012-2013	118	0.028379	2012-2013	4,158
2013-2014	95	0.023691	2013-2014	4,010
2014-2015	123	0.032106	2014-2015	3,831
May - August 2015	34	0.029746	May - August 2015	1,143

\*Each child counted only once.

\*\*Some children counted in more than one year.

September 24, 2015  
Source: MDHHS Data Warehouse

From: Minicuci, Angela (DCH)  
Sent: Friday, September 25, 2015 1:13 PM  
To: Scott, Robert L (DCH); Peeler, Nancy (DCH)  
Subject: FW: Flint follow-up

Importance: High

Hi Nancy and Bob,

The Detroit Free Press wants to do a bigger story about the issue of lead in Flint. I made it clear to her yesterday that we could not say the lead poisonings are related to the water, but she instead wants to do a story about the increase of overall lead poisonings in Flint between 12/13 and 14/15. Are either of you available to speak with her today?

Thank you,

Angela



From: Scott, Robert L. (DCH)  
Sent: Friday, September 25, 2015 1:19 PM  
To: Minicuci, Angela (DCH); Peeler, Nancy (DCH)  
Subject: RE: Flint follow-up

Angela,

I'm available today, but I'm no epidemiologist. The best I could say is something like this: "While the trend for Michigan as a whole has shown a steady decrease in lead poisoning year by year, smaller areas such as the city of Flint have their bumps from year to year while still trending downward overall."

Does that sound reasonable?

Bob

From: Peeler, Nancy (DCH)  
Sent: Friday, September 25, 2015 1:20 PM  
To: Minicuci, Angela (DCH) <MinicuciA@michigan.gov>  
Cc: Scott, Robert L. (DCH) <ScottR9@michigan.gov>  
Subject: Re: Flint follow-up

I think Bob is the best person to speak to them about the lead data, if you are comfortable with that, Bob. My secret hope is that we can work in the fact that this pattern is similar to recent past. :)

Sent from my iPad

From: Minicuci, Angela (DCH)  
Sent: Friday, September 25, 2015 1:36 PM  
To: Peeler, Nancy (DCH)  
Cc: Scott, Robert L. (DCH)  
Subject: RE: Flint follow-up

Bob, I like what you had to say. That's basically what I told her, but she wants to hear it from someone other than a spokesperson ☺ Are you available for a call with her?

Angela

# **EXHIBIT 10**



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**From:** Grijalva, Nancy (DHHS)  
**Sent:** Monday, September 28, 2015 11:12 AM  
**To:** Miller, Mark (DHHS)  
**Subject:** RE: Proposed Press Conference and situation report from Mark Valacak, health officer

What exactly do you mean Gearing up to do more water testing? How much more? When will they start?

---

**From:** Miller, Mark (DCH)  
**Sent:** Monday, September 28, 2015 10:52 AM  
**To:** Anderson, Paula (DCH); Moran, Susan (DCH); Hertel, Elizabeth (DCH); Dykema, Linda D. (DCH); Miller, Corinne (DCH); Wells, Eden (DCH); Becker, Timothy (DCH); Lasher, GERALYN (DCH); Grijalva, Nancy (DCH)  
**Cc:** Robinson, Mikelle (DCH)  
**Subject:** RE: Proposed Press Conference and situation report from Mark Valacak, health officer

**ALL:**

Rashmi and I had a conference call this morning with Mark Valacak, the health officer at the Genesee County Health Department. He should be invited to the proposed press conference (below) and consulted with in advance. He's at 810 257-3588 or [mvalacak@gchd.us](mailto:mvalacak@gchd.us).

**From Mark Valacak:**

**On Formula and WIC**

If a client calls and has concerns about their water, the GCHD will advise them to get their water tested by the City of Flint. If the results come back with elevated lead levels, they can be eligible to switch from powdered formula to "ready to feed". Meanwhile, they will advise the resident to run the cold water tap for at least 5 minutes, and if they want to be absolutely sure, they should use bottled water for all drinking, cooking and making formula until the tests come back. Bottled water is available from the "Diaper Bank" in Flint. (WIC staff are checking to see how much premade formula is available statewide.)

**Testing**

City of Flint is gearing up to do more water testing for residents.

**Data**

Mark Valacak said there's some question about our lead testing database, as there are FLINT mailing addresses in both Mundy and Flint Townships, and those Townships are still on *City of Detroit Water*. (Data questions are being followed up on with Epi Staff.)

**Other PR**

The Flint School Systems advised all students to bring bottled water to school.

There is a Flint City Council meeting on Monday, Sept. 28<sup>th</sup>, at 9 PM. They expect the water situation to be discussed.

Mark Miller  
Director, Local Health Services  
Michigan Department of Health & Human Services  
201 Townsend, 6<sup>th</sup> Floor  
Lansing MI 48913  
(517) 335-8032  
[millerm1@michigan.gov](mailto:millerm1@michigan.gov)

---

**From:** Anderson, Paula (DCH)  
**Sent:** Monday, September 28, 2015 10:19 AM  
**To:** Miller, Mark (DCH) <[millerm1@michigan.gov](mailto:millerm1@michigan.gov)>; Travis, Rashmi (DCH) <[TravisR@michigan.gov](mailto:TravisR@michigan.gov)>  
**Subject:** FW: Proposed Press Conference on Flint Drinking Water

fyi

---

**From:** Grijalva, Nancy (DCH)  
**Sent:** Monday, September 28, 2015 10:16 AM  
**To:** Moran, Susan (DCH); Lyon, Nick (DCH)  
**Cc:** Robinson, Mikelle (DCH); Wells, Eden ([ewells@umich.edu](mailto:ewells@umich.edu)); Hertel, Elizabeth (DCH); Lasher, GERALYN (DCH); Becker, Timothy (DCH); Dykema, Linda D. (DCH); Miller, Corinne (DCH); Anderson, Paula (DCH)  
**Subject:** RE: Proposed Press Conference on Flint Drinking Water

Nick now has a phone conference at 11:30 with the Governor- Congressman Kildee at 11:30 am

---

**From:** Moran, Susan (DCH)  
**Sent:** Monday, September 28, 2015 10:09 AM  
**To:** Lyon, Nick (DCH)  
**Cc:** Robinson, Mikelle (DCH); Wells, Eden ([ewells@umich.edu](mailto:ewells@umich.edu)); Hertel, Elizabeth (DCH); Lasher, GERALYN (DCH); Grijalva, Nancy (DCH); Becker, Timothy (DCH); Dykema, Linda D. (DCH); Miller, Corinne (DCH); Anderson, Paula (DCH)  
**Subject:** Re: Proposed Press Conference on Flint Drinking Water

Lynda Dykema is the contact for questions on Virginia Tech/Hurley data.

Sent from my iPhone

On Sep 28, 2015, at 7:52 AM, Lyon, Nick (DCH) <[LyonN2@michigan.gov](mailto:LyonN2@michigan.gov)> wrote:

Director Wyant and I agreed this morning to establish a team to look at the recommendations below in preparation for a joint press conference later this week. I did modify one and remove one from his original email. He was suggesting an outside public health advisor. I think it's appropriate that this be our CME so I changed that piece. I volunteered GERALYN, Elizabeth, and Dr. Wells to serve on the team.

The areas where we need more attention are as follows:



- 1) I need an analysis of the Virginia Tech/Hurley data and their conclusions. I would like to make a strong statement with a demonstration of proof that the lead blood levels seen are not out of the ordinary and are attributable to seasonal fluctuations. GERALYN is working on this for me but she needs someone in public health who can work directly with her on immediate concerns/questions. Sue -- Please get her a name immediately.
- 2) I need an understanding of what WIC will pay for and when. We are hearing that the USDA is indicating that premade formula can be provided. Internal WIC staff don't seem to be saying the same things. And there may also be a supply issue. Elizabeth is following up for me on this.
- 3) Elizabeth will also follow up with Terry Beuer to see what FNS will pay for on the food assistance side, or if there are other programs that may cover water or premade formula.
- 4) I think we did a good job getting the local public health department involved and I ask that we work in concert with him. The recommendation is that they be included in the press event this week.

We need immediate action on these. I have a follow up phone call early this afternoon. I also ask that any requests coming from the team be treated with great urgency. The expectation is that we will get on top of this and provide leadership on the issue.

Nick

---

**From:** Wyant, Dan (DEQ)

**Sent:** Monday, September 28, 2015 7:18 AM

**To:** Muchmore, Dennis (GOV); Lyon, Nick (DCH); Hollins, Harvey (GOV)

**Cc:** Wurfel, Sara (GOV); Wurfel, Sara (GOV); Lasher, GERALYN (DCH); Thelen, Mary Beth (DEQ)

**Subject:** Proposed Press Conference on Flint Drinking Water

Per the ongoing issues in Flint concerning their drinking water, I would offer the following recommendations. Let's discuss.

### **Recommendation**

Press Conference in Flint -- Wednesday, Thursday or Friday.

### **Participants**

Mayor of Flint

Dan Wyant -- Michigan Department of Environmental Quality

Nick Lyon -- Department of Community Health

Susan Hedman -- Region 5 Administrator or EPA

Harvey Hollins -- Governor's office

Local Public Health Department

### **Announcement**

Federal -- State -- Local action plan to address Flint Drinking Water

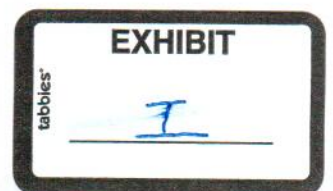
1. Governor Snyder names Dr. Eden Wells (DHHS Chief Medical Executive) as Flint drinking water Public Health Advisor.

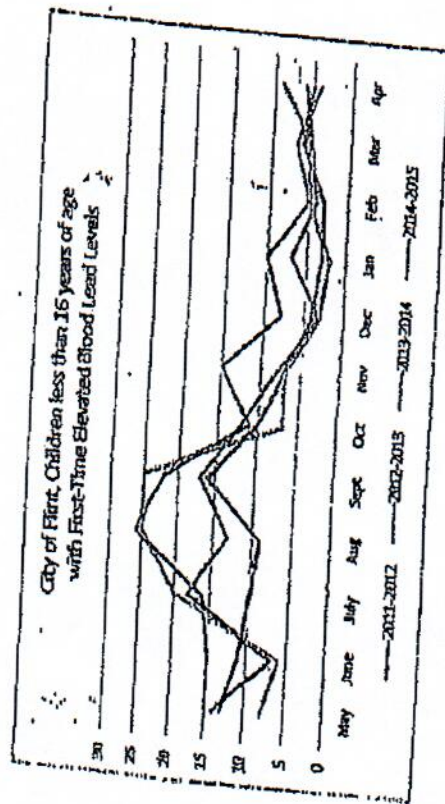
2. All Flint schools water will immediately be tested to ensure that drinking water is safe.
3. Advisories will be disseminated recommending citizens flush your cold water pipes, use only water from the cold water tap for drinking, cooking and especially for making baby formula.
4. Implementation of fully optimized corrosion controls in the Flint drinking water system.
5. Expanded water testing of at risk properties.
6. Offer water testing at no cost to Flint residents to assure water is safe.
7. Convene a safe drinking water "Technical Review Advisory" to ensure best technology, practices and science is being utilized, including EPA's expertise and assistance from their Office of Research and Development.
8. Offer bottled water and premixed formula if test results indicate high levels of lead.

Dan Wyant, Director  
Department of Environmental Quality  
517-284-6700 (New Number)



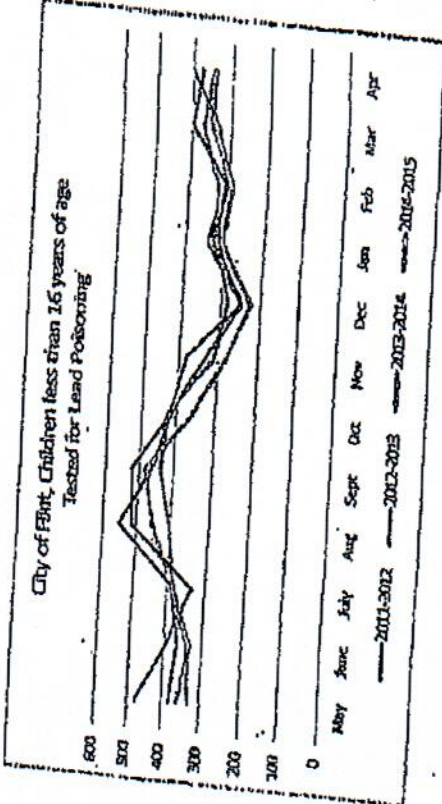
# EXHIBIT 5





2011-2012 2012-2013 2013-2014 2014-2015

Month	2011-2012	2012-2013	2013-2014	2014-2015
May	15	14	13	8
June	15	14	13	8
July	16	15	14	9
Aug	16	15	14	9
Sept	17	16	15	10
Oct	17	16	15	10
Nov	18	17	16	11
Dec	18	17	16	11
Jan	19	18	17	12
Feb	19	18	17	12
Mar	20	19	18	13
Apr	20	19	18	13



2011-2012 2012-2013 2013-2014 2014-2015

Month	2011-2012	2012-2013	2013-2014	2014-2015
May	474	328	380	356
June	474	328	380	356
July	474	328	380	356
Aug	474	328	380	356
Sept	474	328	380	356
Oct	474	328	380	356
Nov	474	328	380	356
Dec	474	328	380	356
Jan	474	328	380	356
Feb	474	328	380	356
Mar	474	328	380	356
Apr	474	328	380	356



> On Jul 28, 2015, at 2:57 PM, Peeler, Nancy (DCH) <PeelerN@michigan.gov> wrote:

>

> I apologize for the delay in responding more specifically to this assignment, it took some time to review our Childhood Lead Poisoning Prevention program data to see if it might contribute to the understanding of the situation in Flint with their water supply. Here is what we found:

>

> We looked at lead testing results for May 2014-April 2015, which is the 12 month time frame just after Flint started drawing their water from the river (water source changed in April 2014). We compared lead testing rates and lead testing results to the same time frame for the previous 3 years, to see if there were any patterns that suggested that there were increased rates of lead poisoning after the water supply was switched. Per the attached charts -

> \* Lead testing rates remained about the same from year to year (chart on the right).

> \* There was a spike in elevated blood lead tests from July-September 2014 (chart on the left, gold line).

> \* However that pattern was not terribly different from what we saw in the previous three years, especially in 2011-2012 (we are working with our Epidemiologist to statistically verify any significant differences).

> \* We commonly see a 'seasonal effect' with lead, related to people opening and closing windows more often in the summer, which disturbs old deteriorating paint on the windows, sills and sashes. Window fans frequently blow and spread the lead dust from the deteriorating paint to other parts of the room/house. We suspect that the summer data spike may be related to this effect.

> \* If the home water supply lines and/or river water were contributing to elevated blood lead tests, we expected that the increased rates would extend beyond the summer, but they drop quite a bit from September to October, stayed low over the winter, and are just starting to tail up again in the spring of 2015.

>

> So upon review, we don't believe our data demonstrates an increase in lead poisoning rates that might be attributable to the change in water source for Flint. We recognize that lead exposure via the water is only a small piece of what may be happening for families in Flint, however, we hope the information is helpful.

>

> Nancy Peeler

>

>

> -----Original Message-----

> From: Anderson, Paula (DCH)

> Sent: Wednesday, July 22, 2015 5:31 PM

> To: Miller, Corinne (DCH); Travis, Rashmi (DCH)

> Cc: Priem, Wesley F. (DCH); Dykema, Linda D. (DCH); Peeler, Nancy (DCH); Bouters, Janese (DCH); Barr, Jacqui (DCH)

> Subject: Director's Office Assignment -- Flint - need update asap

> Importance: High

>

> Good afternoon,

> Please see the message below received from the Director's office just before 5. If at all possible, please provide an update of what you may, or may not, know ASAP, today if at all possible. Include Nancy Grijalva and Sue Moran in the response. Thank you.



>

> -----Original Message-----

> From: Miller, Mark (DCH)

> Sent: Wednesday, July 22, 2015 5:28 PM

> To: Anderson, Paula (DCH)

> Subject: RE: Flint - need update asap

>

> There's an article from the metro times I located:

>

> <http://www.metrotimes.com/Blogs/archives/2015/07/14/flint-family-finds-hazardous-waste-levels-of-lead-in-its-tap-water>

>

> Based on this it sounds like at least one family might have had a child with elevated lead blood levels, which might or might not have come from the water. Sounds like the issue is old lead service lines, but there seems to be some difference of opinion on appropriate testing methods.

>

> I'd send this over to Linda Dykema, Wes Priem and Nancy Peeler for their comments.

>

> DEQ has jurisdiction over municipal water supplies, but we do have a program to follow-up on children with elevated blood lead levels, so I think it would be appropriate for the folks above to discuss the situation and recommend any action.

>

>

>

> Mark

>

>

> -----Original Message-----

> From: Anderson, Paula (DCH)

> Sent: Wednesday, July 22, 2015 4:51 PM

> To: Miller, Mark (DCH)

> Cc: Moran, Susan (DCH)

> Subject: FW: Flint - need update asap

> Importance: High

>

> Nancy requested an answer TODAY. Thanks.

>

> -----Original Message-----

> From: Grijalva, Nancy (DCH)

> Sent: Wednesday, July 22, 2015 4:47 PM

> To: Moran, Susan (DCH)

> Cc: Anderson, Paula (DCH)

> Subject: FW: Flint - need update asap

>

>

>

>



> I'm frustrated by the water issue in Flint. I really don't think people are getting the benefit of the doubt. Now they are concerned and rightfully so about the lead level studies they are receiving from the DEQ samples. Can you take a moment out of your impossible schedule to personally take a look at this? These folks are scared and worried about the health impacts and they are basically getting blown off by us (as a state we're just not sympathizing with their plight).

>

> <Flint Testing and EBLLs\_2.xlsx>

**From:** Scott, Robert L. (DHHS)

**Sent:** Monday, January 04, 2016 1:41 PM

**To:** Garcia, Deborah (DHHS)

**Subject:** FW: Elevated lead found in more Flint kids after water switch, study finds

**From:** Priem, Wesley F. (DCH)

**Sent:** Thursday, September 24, 2015 3:58 PM

**Subject:** Elevated lead found in more Flint kids after water switch, study finds

[http://www.mlive.com/news/flint/index.ssf/2015/09/study\\_shows\\_twice\\_as\\_many\\_flin.html#i\\_ncart\\_email](http://www.mlive.com/news/flint/index.ssf/2015/09/study_shows_twice_as_many_flin.html#i_ncart_email)

I believe Bob Scott is reviewing these findings and can report back to us...

**From:** Scott, Robert L. (DHHS)

**Sent:** Monday, January 04, 2016 1:40 PM

**To:** Garcia, Deborah (DHHS)

**Subject:** FW: Env. Health Perspectives on Washington DC. lead in Drinking Water

**From:** Priem, Wesley F. (DCH)

**Sent:** Thursday, September 24, 2015 1:31 PM

**Subject:** FW: Env. Health Perspectives on Washington DC. lead in Drinking Water